

### **Remarks / Arguments**

Claims 1-30 are pending in this application. Claims 1 – 8 have been withdrawn from consideration. Claims 10-30 are rejected. With this amendment, claims 9, 10 26, 28 and 29 are amended while claim 30 is cancelled.

Upon entry of this amendment the applicants submit that all claims presently in the application are in condition for allowance.

If however, the Examiner believes that there remain any unresolved issues requiring adverse action in any of the claims now pending in this application, it is requested that the Examiner telephone Jeffery J. Brosemer, Ph.D., ESQ. at 732-335-5773 so that arrangements may be made for resolving such issues as expeditiously as possible.

### **Election/Restriction**

In the office action, the Examiner required restriction to one of the inventions as required by 35 USC § 121. More particularly claims 1-8, drawn to protocol implementing or claims 9-30, drawn to file transferring.

During a telephone conversation on September 18, 2007, the applicants provisionally elected without traverse claims 9-30.

Affirmation of that election is now made and the applicants elect claims 9-30.

### **Claim Objections**

Claim 29 is objected to because of several informalities. In particular, the claim was unclear as to whether recitations in parentheses were intended to be part of the recited limitations of the claim. With this amendment, claim 29 is being amended to cure any such informal defects. More particularly, the claim language is now explicit in that a receiver initiates a pull while a sender initiates a push.

### **Claim Rejections -35 U.S.C. §112**

Claims 26 and 28 are rejected under 35 USC § 112 as being indefinite. More particularly, claim 26 recites the limitation “clocking out available data packets in the sink buffer selected by step c)” However, “step c)” was not disclosed in any of the preceeding claims from which claim 26 depends on.

Similarly, claim 28 recites the limitation “looking up the forwarding table installed by step a)”. However, “step a)” was not disclosed in any of the preceeding claims from which claim 28 depends.

In response, the applicants have amended claims 26 and 28 such that the proper steps are now recited in the body of the claims.

### **Claim Rejections -35 U.S.C. §102**

Claims 9-21 and 29-30 are rejected under the provisions of 35 USC § 102 as being anticipated by Tichy et al (US 2006/0101025). Inasmuch as claim 30 has been cancelled by this amendment, the rejection with respect to that claim is now moot.

With respect to remaining claims 9-21 and 29, the applicants submit that in view of the amendments above and the following discussion the rejections are overcome.

As applied, Tichy discloses a distributed file system comprising a plurality of compute nodes communicating with a plurality of I/O nodes over an interconnection network. And despite some similarities with the present invention of the instant application, it does not anticipate that invention, however.

More particularly, the Tichy et al application does disclose that a file may be broken into a number of subfiles which in turn may be stored or otherwise resident on one or more I/O nodes. In other words, it teaches well-known distributed file systems. Particular to this Tichy et al system is that the portions of the broken file are written to a plurality of I/O nodes through the effect of a round-robin scheduling procedure.

It does not however, teach the transmission of a single file residing on a particular server over a plurality of transmission paths to another server where it is reassembled into the single file again. (See, e.g., FIG 9 a, b of Tichy)

That is exactly what is recited now in independent claim 9, which recites (with particularly distinguishing aspects shown in bolded type):

“...A method of file transfer in a computer-based communication network by utilizing an overlay network composed of cooperating servers on computer hosts, said computer hosts connected to said communication network, wherein each said server contains instructions which, when executed by said server, cause said server to process and forward data via

the transport layer to other servers on said overlay network without modifying the native data transport protocol at transport or lower layers, said method comprising the steps of:

**defining a first data forwarding path between two servers, said path comprising of concatenation of overlay links, each of said links established via transport layer between the two said servers in said overlay network;**

**defining a second data forwarding path between the two servers, said path different from the first data forwarding path;**

**dividing the data file in at least two sub-files, first sub-file and second sub-file; and**

**sending first and second sub-files over the first and second data forwarding paths, respectively; and**

**assembling the first and second sub-files into a single file at the second server.**

It is axiomatic that if a single reference does not teach all of the claimed aspects of an invention, then it cannot anticipate that invention. Since the Tichy application does not teach or suggest all of the claimed aspects of the instant application as recited in amended independent claim 9, it cannot anticipate that claim.

Since remaining dependent claims 10-21 and 29 each depends therefrom and further distinguishes independent claim 9, the applicants submit that they too cannot be anticipated by this reference either.

As a result, the applicants submit that claims 9-21 and 29 fully comply with the provisions of 35 USC 102 and are patentable thereunder. Accordingly, the applicants respectfully request the examiner to withdraw these rejections.

### **Claim Rejections -35 U.S.C. §103**

Claims 22-25 are rejected under the provisions of 35 USC § 103 as being unpatentable over Tichy in view of McCanne (US 7,133,928).

Claim 27 is rejected under the provisions of 35 USC 103 as being unpatentable over Tichy in view of Byers et al ("Informed Content Delivery Across Adaptive Overlay Network").

As shown earlier however, the Tichy application does not teach or suggest all of the limitations recited in independent claim 9 as amended. The only remaining question therefore is whether the secondary references provide the necessary teachings to overcome the deficiencies of Tichy. The answer is no.

With respect to McCanne – there it teaches a multicast communication scheme employing an overlay protocol. With respect to the Byers paper, it teaches the use of overlay networks carrying informed content. Despite the apparent relevance between these teachings and the claimed invention of the instant application, the applicants submit that any combination of these references still fails to teach or suggest all of the claimed aspects of the instant invention.

More particularly, while McCanne and Byers do teach some useful transport techniques, when combined with Tichy all they produce is a distributed file system with a variety of transport options. It does not teach or suggest the claimed file transfer operation as claimed.

Consequently, the applicants submit that independent claims 22-25 and 27 are not rendered obvious by the cited combination of references.

**Conclusion:**

The applicants submit that all of the claims now present in this application fully comply with the provisions of 35 U.S.C. §112, 35 U.S.C. §102 and 35 U.S.C. §103 and are therefore allowable. Accordingly, both reconsideration of this application and its swift passage to issue are earnestly solicited.

Respectfully submitted,  
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**CERTIFICATE OF TRANSMISSION UNDER 37 C.F.R. 1.8(a)**

I hereby certify that this correspondence is being transmitted to the United States Patent and Trademark Office on 8/28/2008.

s/Jeffery J. Brosemer/

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